Supreme Court, U. S.
FILED
AUG 6 1979
MICHAEL RODAK, JR., CLERK

No. 79-201

In The Supreme Court of the United States

OCTOBER TERM, 1978

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL., PETITIONERS

v.

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ETC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the Secretary of Health, Education, and Welfare, et al., petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, 1a-5a) is reported at 597 F.2d 119. The opinion of the district court (App. D, *infra*, 9a-15a) is reported at 455 F. Supp. 1212.

JURISDICTION

The judgment of the court of appeals was entered on April 19, 1979 (App. B, *infra*, 6a). A timely petition for rehearing and a suggestion for rehearing en banc was denied on June 4, 1979 (App. C, *infra*, 8a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Sections 901(a) and 902 of the Education Amendments of 1972, 20 U.S.C. 1681(a) and 1682, authorized the Department of Health, Education, and Welfare to issue regulations prohibiting sex discrimination in the employment practices of school districts and educational institutions receiving federal financial assistance.

STATUTES AND REGULATIONS INVOLVED

1. The pertinent statutes (Section 901(a) and 902 of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a) and 1682) are printed at pages 2–6 of the petition in *Harris* v. *Islesboro School Committee*, which we are filing concurrently with this petition.

2. The regulations of the Department of Health, Education, and Welfare provide in pertinent part:

45 C.F.R. 86.51(a)(1):

> No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

45 C.F.R. 86.54:

> A recipient shall not make or enforce any policy or practice which, on the basis of sex:
>
> (a) Makes distinctions in rates of pay or other compensation;
>
> (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

STATEMENT

This case arises out of a suit brought by the respondent Junior College District of St. Louis ("the District")[1] to enjoin regulations of the Department of Health, Education, and Welfare (HEW) prohibiting sex discrimination in the employment practices of those operating federally assisted education programs and activities.

The District receives financial assistance from HEW in support of its educational programs, and it is therefore subject to the provisions of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* (hereinafter "Title IX"), and to authorized regulations promulgated by HEW to effectuate those provisions.

To implement Section 901(a) of Title IX, 20 U.S.C. 1681(a), which provides that, with certain enumerated exceptions, "[n]o person * * * shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any edu-

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[1] Respondent's full name is The Junior College District of St. Louis, St. Louis County, Missouri, sometimes known as St. Louis Community College, a body corporate and political subdivision of the State of Missouri.

cation program or activity receiving Federal financial assistance," HEW issued regulations that, *inter alia*, prohibit sex discrimination in the employment practices of federal education aid recipients. 45 C.F.R. 86.51 *et seq.*

On September 1, 1976, HEW notified the District that the female Dean for Financial Aid and Placement at a campus of one of its colleges had filed a complaint alleging that she was receiving less compensation than males employed in a similar capacity. On December 22, 1977, after it had conducted an investigation, HEW issued a "Letter of Findings," concluding that the complaint established a violation of Title IX and the regulations published in 45 C.F.R. 86.51 and 86.54. HEW tendered a "Conciliation Agreement," but the District refused to sign it, expressing the belief that HEW was operating in excess of its statutory authority (App. D, *infra*, 9a–10a).

The District thereafter filed this action, naming the Secretary and HEW as defendants and seeking to have the regulations in question declared invalid and their enforcement enjoined. On cross-motions for summary judgment the district court granted that relief, holding that 20 U.S.C. 1681(a) (Section 901(a) of Title IX) applies "only to students and other direct beneficiaries of federal financial assistance and not to * * * employees of recipient institutions" and that HEW therefore "had no authority to promulgate and enforce 45 C.F.R. §§86.51 and 86.54" (App. D, *infra*, 14a).

The court of appeals affirmed, relying on the reasoning of the United States Court of Appeals for the First Circuit in *Islesboro School Committee* v. *Califano*, 593 F.2d 424 (1979) (App. A, *infra*, 4a). In its opinion, the First Circuit had held that the language of Section 901(a) and the legislative history of Title IX indicate that Congress did not intend to authorize HEW to issue

regulations prohibiting sex discrimination by federal aid recipients against "employees *qua* employees (as opposed to their status as recipients of specialized federal funding for a special activity or research)" (593 F.2d at 426). The court of appeals in this case also rejected an alternative argument by petitioners that the regulations were valid because Title IX, at the least, empowers HEW to regulate employment discrimination to the extent that it affects students in HEW-funded education programs (App. A, *infra*, 4a n.3). Again following the reasoning of the First Circuit in *Islesboro*, the court of appeals held that a nexus between discrimination against employees and an effect on students must be shown and that no such nexus had been shown as to the regulations in question (*ibid.*).

A petition for rehearing en banc filed by petitioners was denied by an equally divided court, Judges Lay, Heaney, Henley, and McMillian dissenting.

REASONS FOR GRANTING THE PETITION

The question presented in this case is the same as that presented in the petition in *Harris* v. *Islesboro School Committee*, which is being filed concurrently with the instant petition.[2] Both cases involve the authority of HEW to issue regulations prohibiting those receiving federal financial assistance for education programs and activities from discriminating, on the basis of sex, against their employees; but the specific regulations and the particular types of employment practices concerned differ. For the reasons stated in the petition in *Harris* v. *Islesboro School Committee*, we ask that the Court grant the petition for certiorari in this case and, if the petition in *Islesboro* is granted, that it consolidate the cases for argument. In the alternative, the

[2] A copy of our petition in *Harris* v. *Islesboro School Committee* is being sent to counsel for the respondent.

Court may wish to defer disposition of this petition pending final disposition of the petition in *Islesboro*.

CONCLUSION

The Court should grant the petition for certiorari or, in the alternative, defer disposition of the petition pending its decision in *Harris* v. *Islesboro School Committee*.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

AUGUST 1979

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT

No. 78-1830

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ST. LOUIS COUNTY, MISSOURI, SOMETIMES KNOWN AS ST. LOUIS COMMUNITY COLLEGE, A BODY CORPORATE AND POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, APPELLEE,

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AN AGENCY OF THE UNITED STATES OF AMERICA, APPELLANTS.

Appeal from the United States District Court
for the Eastern District of Missouri

Submitted: March 13, 1979

Filed: April 19, 1979

Before BRIGHT and STEPHENSON, Circuit Judges, and BOGUE,* District Judge.

STEPHENSON, Circuit Judge.

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*The Honorable Andrew W. Bogue, United States District Judge for the District of South Dakota, sitting by designation.

Defendant-appellant HEW appeals from the trial court's[1] ruling that HEW does not have authority, under the Education Amendments of 1972, §§ 901-02, 20 U.S.C. § 1681-82, to regulate employment discrimination. We affirm.

HEW received a complaint of sex discrimination (equal pay) filed under Title IX, Educational Amendments of 1972, 20 U.S.C. § 1681 et seq., by an employee (Assistant Dean for Financial Aid and Placement at Florissant Valley Campus) of plaintiff-appellee Junior College District of St. Louis. Upon investigation, HEW determined that there had been discrimination and thus issued a Conciliation Agreement along with a directive that stated should plaintiff not take corrective action, HEW would begin administrative adjudication proceedings to terminate plaintiff's federal financial assistance.

Plaintiff refused to comply with the Conciliation Agreement and filed this suit in district court pursuant to 28 U.S.C. § 1331 seeking declaratory and injunctive relief.

20 U.S.C. § 1681(a) provides in part:

> (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance * * *.

20 U.S.C. § 1682 gives HEW the authority to promulgate the rules and regulations and also provides (in part):

> Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law * * *.

[1] The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri. The district court's opinion is reported at 455 F. Supp. 1212 (E.D. Mo. 1978).

The controversial regulations by which HEW asserts its authority to regulate employment discrimination on the basis of sex, 45 C.F.R. §§ 86.51(a), (b)(3), and 86.54, provide in part:

> (a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.
>
> * * *
>
> (b) *Application.* The provisions of this subpart apply to:
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> * * *
>
> (3) Rates of pay or any other form of compensation, and changes in compensation * * *.
>
> * * *
>
> A recipient shall not make or enforce any policy or practice which, on the basis of sex:
>
> (a) Makes distinctions in rates of pay or other compensation;
>
> (b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs

> the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

The primary issue here is whether section 1681(a) covers employment discrimination; more specifically, the question is whether section 1681(a) covers only the direct beneficiaries of the federal funds and whether this includes personnel administering such federally funded programs.

The First Circuit in *Isleboro School Comm. v. HEW*, Nos. 78-1302 & 78-1304 (1st Cir. Mar. 9, 1979), has thoroughly addressed this question. We agree with the First Circuit's disposition of the issue and adopt the decision of that court.[2]

HEW's primary arguments are that the plain language of section 1681(a) and the legislative history of Title IX support HEW's position that employment discrimination was meant to be included within the scope and purpose of section 1681(a).

The First Circuit accurately noted that the plain language of section 1681(a) does not include employment discrimination, and after a thorough analysis of the legislative history, the First Circuit also determined that the intent of Congress was not to "embrace prohibitions against sex discrimination in employment" via section 1681(a). *Id.*, slip op. at 7.

Because we agree with the First Circuit, and because it has addressed HEW's arguments thoroughly,[3] we decline to add an unnecessary and essentially duplicative discussion of these issues. For the reasons set out by the First Circuit in *Islesboro*, we affirm the district court.

[2] The underlying discrimination charge in *Islesboro* concerned maternity leave employment policies which HEW asserted violated 45 C.F.R. § 86.57(c). Other than this factual distinction, the case is identical with the instant one insofar as the legal issues are concerned.

[3] HEW also argues that even if section 1681 does not authorize regulation of employment practices directly, HEW has authority to issue regulations which prohibit sex discrimination in employment to the extent that it constitutes discrimination against students. As in *Islesboro*, "[a] nexus between the discrimination against employees and its effect on students must first be shown." *Islesboro School Comm. v. HEW*, *supra*, slip op. at 11. Such nexus was not shown in this case. Further, the regulations in issue do not address the effects of discrimination on the students.

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1830

September Term, 1978

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ST. LOUIS COUNTY, MISSOURI, SOMETIMES KNOWN AS ST. LOUIS COMMUNITY COLLEGE, A BODY CORPORATE AND POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, APPELLEE,

VS.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AN AGENCY OF THE UNITED STATES OF AMERICA, APPELLANTS.

Appeal from the United States District Court
for the Eastern District of Missouri.

This cause came on to be heard on the record of the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and is hereby affirmed.

Costs taxed in favor of Appellee: April 19, 1979

Costs of printing 10 copies of Appellee's brief: $85.00

Costs of printing 5 copies of Appellee's appendix: $20.00

Total costs of Appellee for recovery from Appellants in the U.S. District Court: $105.00

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78–1830. September Term, 1978

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ETC., APPELLEE,

vs.

JOSEPH A. CALIFANO, JR., ETC., ET AL, APPELLANTS.

Appeal from the United States District Court
for the Eastern District of Missouri.

The Court having considered petition for rehearing en banc filed by counsel for appellants and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied. The petition for rehearing en banc is denied by an evenly divided Court. Judges Lay, Heaney, Henley, and McMillian would grant the rehearing en banc.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

June 4, 1979

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78–319C(3)

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ST. LOUIS COUNTY, MISSOURI, PLAINTIFF,

vs.

JOSEPH A. CALIFANO, JR., ETC., ET AL., DEFENDANTS.

MEMORANDUM

This matter is before the Court upon defendants' motion to dismiss and upon cross-motions for summary judgment. Plaintiff filed this suit pursuant to 28 U.S.C. §1331 seeking declaratory and injunctive relief. Plaintiff alleges in its complaint that it is a public institution of higher education receiving considerable amounts of federal financial assistance. On September 1, 1976, plaintiff was notified by defendant, United States Department of Health, Education and Welfare, that a complaint of sex discrimination under Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*, had been filed by an employee of plaintiff. The employee charged that she received less compensation than males employed in a similar capacity by plaintiff. Thereupon, defendant HEW proceeded to investigate the charge, including examination of plaintiff's employment practices, demands for information and documents, and demands for office space and the use of a telephone. Plaintiff alleges that it has complied with all such requests which has forced plaintiff to incur expenses and lost man-hours. On December 22, 1977, defendant HEW issued a "Letter of Findings" wherein it concluded that plaintiff had discriminated against the complaining employee. A "Conciliation Agreement" has been tendered

to plaintiff and plaintiff has been informed by defendant HEW that if the charges are not settled by conciliation, HEW will transmit the file to its Washington, D.C. office for commencement of administrative adjudication proceedings leading to a termination of all of plaintiff's federal financial assistance. On March 21, 1978, upon the advice of counsel, plaintiff informed defendant HEW of its decision to discontinue participation in conciliation efforts or administrative adjudication upon the belief that defendant HEW lacked jurisdiction of the charge filed. Plaintiff alleges that defendant HEW's promulgation and enforcement of 45 C.F.R. §§86.51-86.70 is in excess of the authority conferred by Congress, violates Article I of the United States Constitution, violates plaintiff's Fifth Amendment rights, and is in excess of statutory jurisdiction and authority. When defendant HEW refused to discontinue or stay further proceedings upon the charge filed by plaintiff's employee, plaintiff filed this suit.

Defendants contend, in the motion to dismiss, that plaintiff has failed to state a claim because defendant HEW has authority to prohibit discrimination in employment and further asserts that subject matter jurisdiction is lacking because plaintiff has failed to exhaust administrative procedures. This latter contention is without merit. The same was rejected in *Romeo Community Schools v. United States Department of Health, Education and Welfare*, 438 F.Supp. 1021 (E.D. Mich. 1977), *appeal pending*, No. 77-1691 (6th Cir. 1978); and *Seattle University v. United States Department of Health, Education and Welfare*, 16 EPD ¶8241 (W.D.Wash. 1978).

Defendants' contention that defendant HEW has authority to prohibit discrimination in employment, in support of its motion to dismiss, is also asserted in support of its alternative motion for summary judgment. Plaintiff's motion for summary judgment asserts that defendants do not have such authority.

Title 20 U.S.C. §1681(a) provides in part:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .

Title 20 U.S.C. §1682 empowers defendant HEW to promulgate rules and regulations and further provides:

> Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirements, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been found, or (2) by any other means authorized by law. . . .

The relevant regulations provide in part:

> (a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.
> . . .
>
> (b) *Application.* The provisions of this subpart apply to:
> . . .

(3) Rates of pay or any other form of compensation, and changes in compensation. . . . 45 C.F.R. §86.51.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:
(a) Makes distinctions in rates of pay or other compensation;
(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. 45 C.F.R. §86.54.

The arguments advanced by defendants herein have been made to and rejected by three other courts. See *Romeo Community Schools, supra* (pregnancy policy); *Seattle University*, supra (compensation); *Brunswick School Board v. Califano*, 16 EPD ¶8242 (D.C.Me. 1978) (pregnancy policy). Each of these courts have held that defendants do not have the statutory authority to regulate employment discrimination and that therefore, the regulations promulgated with reference thereto are void. This Court agrees.

Title 20 U.S.C. §1681 by its own language refers only to participants or beneficiaries of the educational program receiving financial assistance. An employee, under the circumstances presented herein, is not such a participant or beneficiary. *Romeo Community Schools*, supra at 1031; *Seattle University, supra* at 5244–45; *Brunswick School Board, supra* at 5250. This construction is supported not only by the language of §1681 but by the nature of the exclusions thereto, and the enforcement provisions of §1682. As noted by the courts in *Romeo Community Schools*, *Seattle University*, and *Brunswick School Board*, termination of funds where the students are themselves the victims of discrimination is justified: ". . . any benefit which students might derive from education programs financed by HEW was more than outweighed by the sex discrimination in

those programs". *Romeo Community Schools, supra* at 1032. A termination of funds where only an employee, and not any student, was the victim of discrimination can not be justified. The sanction does not enforce the students' rights, since their rights have not been violated. Additionally, the court in *Seattle University* noted that the termination of funds would probably result in the lay off of staff and other employees. Accordingly, if defendants' interpretation were correct, Congress was authorizing the termination of funds, leading to the lay off of employees, in order to enforce the employees' rights. "Since it is doubtful that Congress intended to resort to such an arbitrary enforcement measure to protect employee rights, it is similarly doubtful that Congress intended by §1681 to protect employees at all." *Id.* at 5245.

An additional support for the construction that §1681 does not include employees is found in the requirement of §1682 that the termination of aid be "program-specific." By its very nature, supervision of employment policies is not program-specific. Thus, through its attempt to regulate employment policies, defendants assert the right to terminate all funding in contravention of the statutory language in §1682.

The only other argument asserted by defendants which merits extended discussion is the argument that defendants have the authority to investigate discrimination in employment to the extent that it constitutes discrimination against students. The Court rejects this argument:

> Whatever its validity or significance . . . the possibility of such a discriminatory infection does not authorize HEW to regulate employment practices for their own sake, and that quite clearly is what HEW purports to do through Subpart E of its Title IX regulations. There is no provision in any of these regulations which specifies that the particular employment practice regulated must result in substantial sex discrimination against students in

federally financed education programs, nor does it appear that HEW considers itself under any obligation to establish such resultant student discrimination before the requirements of Subpart E may be enforced. *Romeo Community Schools, supra* at 1035.

See also *Seattle University, supra* at 5246; *Brunswick School Board, supra* at 5253.

Accordingly, the Court concludes that plaintiff's motion for summary judgment should be granted and that defendants' motion should be denied. Since this Court has construed 20 U.S.C. §1681 to apply only to students and other direct beneficiaries of federal financial assistance and not to apply to employees of recipient institutions, defendants had no authority to promulgate and enforce 45 C.F.R. §§86.51 and 86.54. Declaratory and injunctive relief will be entered for plaintiff.

/s/ John F. Nangle
United States District Judge

September 20, 1978.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 78-319C(3)

THE JUNIOR COLLEGE DISTRICT OF ST. LOUIS, ST. LOUIS COUNTY, MISSOURI, PLAINTIFF,

VS.

JOSEPH A. CALIFANO, JR., ETC., ET AL., DEFENDANTS.

ORDER

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that defendants' motion to dismiss be and is denied.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment be and is granted and that defendants' motion for summary judgment be and is denied.

IT IS FURTHER ORDERED that the regulations set forth in 45 C.F.R. §§86.51 and 86.54, promulgated by defendants pursuant to 20 U.S.C. §1681 *et seq.*, be and are invalid and void and of no effect whatsoever.

IT IS FURTHER ORDERED that defendants Joseph A. Califano, Jr. and United States Department of Health, Education and Welfare, agents, employees and persons in active concert or participation with them, are permanently enjoined from engaging in any investigation of plaintiff The Junior College District of St. Louis, St. Louis County, Missouri pursuant to any complaint filed with defendants alleging discrimination against any employee of plaintiff pursuant to 45 C.F.R. §§86.51 and 86.54; from making or attempting to make any finding that plaintiff is in noncompliance with said regulations; from terminating or refusing to grant, or attempting to terminate or refuse to grant federal financial assistance to plaintiff for any alleged noncompliance with said regulations; and from failing to duly and normally process plaintiff's applications for federal financial assistance.

/s/ John F. Nangle
United States District Judge

September 20, 1978.